P 15 E

App. F. IX-4

1937-8
(C.S)

File No. 37-37
Serial Nos. 1-2

Previous References
C. 16-36 (1-8)
" 85-35 (1-6)
Legis 47-32 (1-3)
Letter References
CS, 36.40-1-5

PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two

Part B for April 1938

SUBJECT.

Application of section 42A of the Cooperative Societies to cases of wilful negligence etc of Directors of Cooperative Societies

D8029

14-4-38

WD 0295—GPB—22,500—18-8-37

To the Registrar of C.S.
Directs that section 42A cannot be applied to general disputes coming to notice under 43A

M
9/5/38

GENERAL AND REVENUE SECRETARIAT.

(65)

NOTES.

File No. 37-37

FILE HEADING.

Application of Section 43A of the Cooperative Societies Regulation to cases of wilful neglect of Directors of Cooperative Societies —

FROM The Registrar of Cooperative Societies in Mysore.

No. 2885 Dated 11-10-37 Received 16-10-37

Diary No. 2191 Enclos. Two (2) spare copies Serial No. 1

BRIEF ABSTRACT OF LETTER

Forwards the records of the case of Holenarsipur Cooperative Society and Karekallahalli Cooperative Society in Holenarsipur Taluk the neglience of the Directors of these Societies in carrying out their functions properly and enquires whether Section 43A applies to these Cases.

NOTES AND ORDERS.

1) The Registrar has forwarded two files of records relating to 1) the Holenarsipur Society and 2) the Karekallahalli Society in which he requests that the Dy Registrar has come to the conclusion that the Committees of management of the Societies are responsible to surcharges for their negligence.

2) The Registrar states that Section 42 A applies only to cases coming up under either Section 17 or

NOTES—First Sheet

WD 0183—GPB—1,500—14-9-34

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Section 35 of the Regulation and finds a doubt whether the Section 42 A may be applied in case covering up under 43 A of the regulation

3) In the case of Kanekallelli Society it is stated that one Kuriakose obtained a mortgage loan on the security of his property The property proposed to be mortgaged to the society had already been mortgaged to another and was not free from encumbrances which fact was not brought to the notice of the society by the applicant nor the Committee enquired into it. The Committee seem to have agreed to the grant of the loan after taking collateral security from the applicant. The Secretary relied merely on the statement of the applicant and disbursed the loan without enquiring into the fact properly. The Deputy Registrar proposes to surcharge the Secretary for gross negligence.

4) As regards the Hollambalka Co-operative Society it is seen that certain articles of grain etc which were appearing in the books of the Society from 1931 were arranged to be sold by a resolution of the Committee of management at its meeting held on 15-2-34 The articles were sold to one Mr Avarachan (a member of the Committee) thru ananayanappa for Rs 49-6-0 on credit No security was taken from the purchaser. It was found later on that the amount was irrecoverable The Dy Registrar proposes to surcharge the Committee members by selling the properties to a person

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3002 P 37 3

General and Revenue Secretariat | (a) File No. 3.) of 1937. | [App. F. III—2

Serial No.

without obtaining ~~order~~ adequate security for the amount due. Both these Cases have come to light during the course of the disputes filed under Sec 43A. Section 17 of the Regulation relates to audit and Section 35 to the enquiry & inspection. The question is whether apart from these Sections, the Section for forfeiture may be applied to Cases coming under Sec 43A.

5) It is submitted that the Register has, on various occasions sanctioned the Secretaries and Presidents of Courts for neglience of their duties. Two such cases came up to Govt viz. 1) Jonnavarapu Ramkrishnaiah Notary of Bapatla per G.O. and 2) A. Narayanadas of the Kurnool bar appealing against the orders of the Register where Govt declined to interfere with the order of the Register. It is not known under what authority the Register decided these cases of sanction against the Secretaries & Presidents etc.

Flag G & H
85-35(1-6)
1-36(1-8)

6) Submitted for orders whether information may be called for as to the authority under which these cases were disposed of. The Law Dept may be consulted, if approved.

16/11/37
BRR

For favour of remarks

7) Both Secy & Law Secy
17.11.37

Law
BRR
(18/11/37)

NOTE—Contn. Sheet

WD 0284—GPB—30,000—13-8-37

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C.S. File No. 37. of 1937. | General and Revenue Secretariat

8) I have carefully gone through the papers. Though the Registrar is asking for the opinion of the Law Department of Govt, on what appears to be a general question, the opinion to be furnished will have an important bearing on the decision of the two cases pending disposal at his hands. I feel therefore a doubt whether at this stage, it would be proper to express an opinion which would perhaps influence the Registrar to decide the cases in a particular way. The better course seems to be to ask the Registrar to interpret Section 42 A in his own way and decide the cases. If and when the matter comes up before Govt at a later stage, the Govt may get the legal question examined and express their views in the matter.

BOKR
15.1.38

Asst. Secy
Dev. Dept
WC

9) Draft for appn.

16/
17.1.38.

Secy (L.S.G.)

LOCAL SELF GOVT 1

4277 Coop
P 37

2101/D 3548

General and Revenue Secretariat | CS File No. 37 of 1937. | [App. F. III—2

Serial No.

16) Dft reply to Repr. C.S. for approval upon issue of new prize legal opinion expressed

Mrs
19.1.38

11 Members)

CS
19.1.38

SECOND [illegible] COUNCIL.
19 JAN. 1938
No..... 52 of 5....

17) The Law secretary may note its opinion on the point raised — which is purely one of jurisdiction — without reference to the facts of the particular cases.

Mrs
20/1/38.

Mrs
20.1.38

CS
20.1.38

12) Asst. Secy. (Law)
W/C.

13) The Registrar raises a general question whether acts of the Board of Directors for gross or wilful negligence or contrary to the bye-laws come under the provision of Section 42 A as acts of breach of trust.

14) It may be observed that Section 42 A is of a penal nature and has therefore to be construed strictly.

NOTE—Contn. Sheet.

WD 0284—GPB—80,000—13-8-37

the power vested under that section has to be used when there has been a mis-appropriation or fraudulent retention of any money or other property, or a breach of trust in relation to Society. Regarding the cases of mis appropriation and breach of trust, dishonest intention is the gist of the offence. A person is said to do a thing dishonestly when he does it with the intention of causing wrongful gain to one person or wrongful loss to another person. From mere acts of negligence causing loss to one person, it is difficult to presume a dishonest intention. Each case of negligence has to be examined to see whether a particular act was done honestly or dishonestly. It may also point out that a thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not. (See section 3 (15) of the General Clauses Act). There can therefore be no breach of trust. If there is no dishonest use

General and Revenue Secretariat | C.S. File No. 37 of 1937 | [App. F. III—2

Serial No.

or disposal.

15) The position will, however, be different where acts are done in violation of the bye laws in force. If as a result of such action, the society has suffered any loss, I think the Directors may reasonably be made liable to make good such loss.

BDR
31.1.38

Asst. Secy
Dev for
WC

16) Refer. to/Members opinion at para.

Secy/d.S.G.)

2.2.38.

14) The provision in S. 42-A. seems to restrict the Registrars powers to take action for breach of trust, misappropriation etc. etc. only when such a thing comes to his notice — (i) in the course of an audit under S. 17, (ii) or an enquiry under S. 35, or (iii) an inspection under S. 36., or (iv) the winding up of a society.

17) In the present case, the alleged

NOTE—Contn. Sheet.

5068/37

21.

CS File No. 37 of 1937. | General and Revenue Secretariat

This appn in the first case came to light in the course of hearing a dispute H.S. 43 H.; and in the second case in the course of the sale proceedings by the Rev. Deptt. of the mortgaged properties of the debtor, for the realisation of the decretal amount. Respectively, prima facie, do not come under any of the four categories mentioned above. Their appeal may kindly be also examined.

16/26/2

Dy. Secy. Law
WJC

283

Law
10 KR
4) 1.3.38

Dev Bar for kindly putting up the file
16/3/38

18) Please put up the file leading to Regulation (Act) VI of 1933

DKR
15.3

21) As I have already observed, the section (42A) is of a penal nature and has to be construed strictly. As the wordings of the section stand, it seems to me that the Regis has no power of surcharging the

GEN. & REVENUE SECRETARIAT
DEPARTMENT BRANCH.

20) Secn 47-32 (1-3) is put up herewith for Dy Secy Bar
17/3/38

Application of Sec 42(B) Motor Act to cases coming under Sec 63(A)

5064 9

General and Revenue Secretariat | CS File No. 37 of 1937. | [App. F. III—2

Serial No.

the delinquent promoters, Mysore etc. should be confined to the four instances, specifically mentioned in the Section, in the course of which misappropriation etc. of any past or present Mysore Govt Society is brought to light.

BNR 20.3.38

Asst. Secy Draw Bor wc

2nd) Secy. (L.S.G.)

CS 21/3

3rd) Refer para 11

22 3 38

11 Members)

4th) The opinion of the Law Secretary may be communicated to the Registrar

Secy 23/3/38

2573

5th) Dft letter to the Reg is subd for appl

2873/38

CS 25

6th) Secy (L.S.G.)

CS 28/3

7th) Please submit for approval

CS 6/4 CS 514.

SECOND BOARD OF SECRETARIAT, 22 MAR 1938, No. 704

GOVT OF MYSORE.

NOTE—Contn. Sheet.

WD 0284—GPB—30,000—13-8-37

4th) Typing Section for kindly putting up a Speed draft

BV SD 4/4/38

10

3548
D

Application of section 42A to Cases coming up under section 43A.

Bds File No. 37	of 193).	General and Revenue Secretariat

Typed draft is submitted

6/4/38

7-4-38

(Secy to B.G.)

9 4 38

6/4/38

To. The Registrar of b.s. D8029. 14-4-38 2

States that Section 42 A has to be construed strictly and the Power of Surcharging the Persons should be confined to four instances.

GEN. & REVENUE SECRETARIAT DEPARTMENT

C.S 37-37-1

16 OCT. 1937

DEVELOPMENT BRANCH

No. 2888 ..... C. S.

2 Records.

GOVERNMENT OF MYSORE.

DEPARTMENT OF CO-OPERATION.

OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES IN MYSORE.

Telegraphic Address: "CO-OPERT" Bangalore

Dated Bangalore, 11th October *193* 7.

2101

FROM

SECY. TO LOCAL SELF GOVT. GOVT. OF MYSORE. 12 OCT. 1937

M. ABDUL HUKH, Esq., B.A.,
Registrar of Co-operative Societies in Mysore,
BANGALORE.

To

The Secretary to the Government of Mysore,
Local Selft Govt.. " Department, Bangalore.

Sir,

I have the honour to forward herewith the marginally noted records relating to disputes Nos.261 of 35-36 and 347/33-34 on the file of the Deputy Registrar of Co-operative Societies in charge of Kolar Division in the matter of surcharging the committee members of the Hollambalia Co-operative Society in the Kolar Taluk and Karekallahalli Co-operativ Society in the Goribidnur Taluk respectively for the recovery of tl amounts due under the disputes and to state as follows:-

Dis.No.261/35-36
The Hollambalia C.S., Vs. A.Suryanaranappa
Kadur Taluk. & 3 others.
Dis.No.347/33-34.
The Karekallahalli C.S. Vs.Mr.Kuri Venka-
Goribidnur Taluk. tappa.

Under Section 42 (A) of the Mysore Co-operative Societies Regu lation, the Registrar may order surcharge under certain circumstan The Section lays down that when in the course of an audit under Section 17 or an enquiry under Section 35 or the winding up of the society, it appears that any person who has taken part in the organisation or management of the society, or any past or present offic of the society has misappropriated or fraudulently retained any prc perty or been guilty of breach of trust in relation to the society, the Registrar may order a surcharge. The first case referred to by the Deputy Registrar has come to his notice in the course of hearir a dispute under Section 43 A.in which the Deputy Registrar has come to the conclusion that the Committee members should be made liable for the amount in dispute on the ground that they did not exercise proper discretion and acted contrary to the byelaws of the society.

In the other case, the society has sustained loss on account

P.T.O.

of the existance of the prior encumbrances on the mortgaged properties which was not disclosed by the party at the time of obtaining the loan nor did the committee members who sanctioned the loan took pains to ascertain this. This fact came to light only when the mortgaged properties of the judgment debtor were brought to sale by the Revenue authorities for the realisation of the decretal amount. It is a point for orders whether acts of omission or negligence on the part of the Directors come under Section 42 (A).

As similar cases are coming up for orders and as some doubt has been felt as regards the application of the said Section to such cases, I request that Government Advocate may be instructed to furnish his opinion as to whether acts of the Board of Directors for gross or wilful negligence or contrary to the byelaws come under the provision of this Section as acts of breach of trust and can be tried by me under the Section. The records submitted may kindly be caused to be returned when done with.

I have the honour to be,
Sir,
Your most obedient servant,

Registrar.

L.S.9/10.

4043 P:37

48 3

GOVERNMENT OF MYSORE.

DEPARTMENT OF CO-OPERATION.

OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES IN MYSORE.

D. O. No. 497

Dated Bangalore, 3rd January.....1938.

C.S. 37-37.

Diary No 2101.

Dear Mr. Krishna Rao,

I invite your kind reference to this office letter No. 2888/C.S.dated 11th October 1937 forwarding the dispute records of the Hollambella and Karekallahalli Co-operative Societies in the Kolar and Goribidnur Taluks respectively and requesting to be furnished with the opinion of the Government Advocate whether the unauthorised acts of the Board of Directors in the circumstances stated in my letter will come within the provision of Section 42(A) of the Mysore Co-operative Societies Act VII of 1918 as amended from time to time and to request that the opinion of the Government Advocate may kindly be obtained and communicated to me early as similar cases are cropping up and pending final disposal in my office.

Yours sincerely,

P.H.Krishna Rao, Esq., M.A.,
Secretary to the Government of Mysore,
Local Self Government Department, Bangalore.

Dro 2101
Ag. Law 17/11

L.S.3/1.

The file has been sent to the Asst Secy Law for favour of remarks on 17/11/37. If approved this will be sent to him in Court Lobby.

8/1/38

1584. Secy. Law Secn.)

8/1/38.

The main file is returned

Asst. Secy (Law Secn.) for

12.1.38

W-8027/ C.S. 31-37-2 4

The Registrar of C. S. 14 4-38

Sir,

With reference to your letter dated 11th October 1937 requesting instructions whether acts of the Board of Directors coming to the notice of the Department during the hearing of a dispute under Section 43.A, or in the course of sale proceedings and which are the nature of gross or wilful negligence or contrary to by-laws may be construed as acts of breach of trust as contemplated under Section 42.A, of the Co-operative Societies Act, I am directed to state that Section 42.A is of a penal nature and has to be construed strictly, and the power of surcharging the persons should be confined to the four instances specifically mentioned in Section 42.A, in the course of which misappropriation etc., by any past or present officer of the Society is brought to light and cannot be applied to general disputes coming to notice under 43 A, or any other Section of the said Act.

The records received with your letter are returned herewith.

I have etc.,

14/4/38

Secry. L. S. G. Dept

16/ 14.4.38

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. D8029/CS.37-37-2 Bangalore, Dated, 11th April 1938.
Encls — Relative Records 14

From

The *Secretary to the Government of His Highness the Maharaja of Mysore,*
Local Self-Government Department.

To

The Registrar of Co-operative Societies in Mysore,
Bangalore.

Sir;

With reference to your letter No.2888 dated 11th October 1937 regarding interpretation of Sections 42A and 43A of the Co-operative Act, I am directed to state that Section 42A is of a penal nature and has to be construed strictly, and the power of surcharging the persons should be confined to the four instances specifically mentioned in Section 42A, in the course of which misappropriation etc., by any past or present officer of the Society is brought to light and cannot be applied to general disputes coming to notice under 43A or any other Section of the said Act.

The records received with your letter are returned herewith.

I have the honour to be,

Sir,

Your most obedient servant,

12/4

Secretary to Government,
L.S.G. Department.